

April 20, 2004

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System

Mr. John D. Hawke, Jr.
Comptroller of the Currency

Re: Docket Number R-1180; Docket Number 04-05
Request for Burden Reduction Recommendations; Consumer Protection: Lending-Related Rules; Economic Growth and Regulatory Paperwork Reduction Act of 1996 Review

Dear Ms. Johnson and Mr. Hawke:

Thank you for giving us this opportunity to participate in the Federal Reserve Board's ("Board") and Office of the Comptroller of the Currency's ("OCC") efforts to identify regulations to be the subject of regulatory relief efforts. Wells Fargo & Company and its affiliates ("Wells Fargo"), including Wells Fargo Bank, N.A., Wells Fargo Home Mortgage, Inc. and Wells Fargo Financial, Inc., appreciate the opportunity to comment on the review of certain rules categorized as "Consumer Protection: Lending-Related Rules" pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996¹ ("EGRPRA"). Wells Fargo is a financial services company that owns and operates national banks in 23 Western and Midwestern states, the nation's leading retail mortgage lender, and one of the nation's leading finance companies. We appreciate your consideration of our comments.

According to EGRPRA, regulatory agencies, such as the Board and the OCC, are required to review their regulations at least once every ten years. On June 16, 2003, the Board and the OCC along with the Federal Deposit Insurance Corporation ("FDIC"), and the Office of Thrift Supervision ("OTS"), (collectively, the "Agencies"), published in the Federal Register an announcement of the beginning of a three-year joint effort to obtain suggestions from the industry and public on more streamlined and less burdensome ways to regulate the various regulated entities². As part of this effort, the agencies intend to request comment on 12 subjects. The joint Request for Comments on Consumer Protection: Lending-Related Rules (the "Request") was published in the Federal Register January 21, 2004.³

¹ Pub. L. No. 104-208.

² 68 Fed. Reg. 35,589 (June 16, 2003).

³ 69 Fed. Reg. 2,852 (January 21, 2004)

In connection with these rulemakings, the agencies invite all relevant comments, but suggest that commenters specifically address one or more of the following issues: (i) the need for statutory change; (ii) the need and purpose of the regulation; (iii) overarching approaches/flexibility of the regulatory standard; (iv) effect of the regulations on competition; (v) reporting, recordkeeping and disclosure requirements; (vi) consistency and redundancy; (vii) clarity; and (viii) burden on small insured institutions.

The regulations included in the review are those related to Fair Housing,⁴ loans identified in flood hazard areas,⁵ Consumer Leasing,⁶ Equal Credit Opportunity Act (ECOA),⁷ Home Mortgage Disclosure Act (HMDA),⁸ Truth in Lending Act (TILA),⁹ and Unfair and Deceptive Acts or Practices.¹⁰ Wells Fargo is writing to address provisions in the TILA and HMDA regulations.

The scope of the regulations under review is extremely broad covering most of the major federal regulations applicable to lenders extending credit for personal, family and household purposes, generally referred to as consumer lending. The review includes regulations related to both secured and unsecured lending for products including personal loans and lines of credit, automobile financing, credit card revolving loans, home equity loans and lines of credit and first mortgage purchase loans and refinancing. Given the breadth of this review, we found it difficult to conduct an exhaustive review of all the applicable regulations in order to prepare of comprehensive list of provisions within the regulations which are burdensome to conducting the business of a national bank and its affiliates.

Additionally, we deliberated about what constitutes a “burdensome” regulation and the impact of changing a regulation that is currently integrated into our policies and procedures. Even though some regulations were difficult and costly to implement, i.e., burdensome, now that the efforts to comply with the regulations have been completed it might be just as difficult and costly to change. Therefore, at this point it may be more burdensome to remove or modify the existing regulation than to merely continue to comply using our existing policies, procedures and systems.

Given the breadth of the regulations under review, the limited time and resources to conduct an exhaustive review, and the potential cost that would be involved in changing our systems which have been adjusted to comply with the existing regulations, we are taking a two-prong approach to our comments. First, we are providing general comments concerning consumer lending regulations. These general comments are intended to provide the Agencies with an overview of the types of requirements which lenders find difficult to consistently implement,

⁴ 12 CFR Part 27

⁵ 12 CFR Part 22, implanting the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4129).

⁶ 12 CFR Part 202. Regulation M is the implementing regulation to the Consumer Leasing Act which is Ch. 5 of the Truth in Lending Act (15 U.S.C. 1601 et seq.)

⁷ 12 CFR Part 202. Regulation B is the implanting regulation to the ECOA which is Title VII of the Truth in Lending Act (15 U.S.C. 1601 et seq.)

⁸ 12 CFR Part 203. Regulation C is the implementing regulation of HMDA (12 U.S.C. 2801 et seq.).

⁹ 12 CFR Part 226. Regulation Z is the implementing regulation to the Truth in Lending Act (15 U.S.C. §§ 1601 et seq.).

¹⁰ 12 CFR 227.11-227.16. Regulation AA is the implementing statute for section 5(a)(1) of the Federal Trade Act (15 U.S.C. 45(a)(1)).

areas where the penalty for non-compliance may exceed any harm to consumers, and areas where the regulations may be so complex that they cease to be beneficial to consumers. Second, we are providing a few specific areas where we believe that some regulatory relief may assist lenders to comply without harming consumers. In fact, the changes very well may provide additional clarification for consumers.

I. General Comments

Following are some general comments applicable to consumer lending requirements and are not necessarily limited to a specific regulation.

A. State Regulatory Requirements.

The combination of complying with both federal and state regulations covering the same consumer credit products is burdensome. This is especially true of a national bank offering products in all fifty states and the District of Columbia. Many of the state regulations are similar to federal regulations, but have slightly different requirements. Lenders expend a significant amount of effort and cost tracking and implementing the various state requirements.

The recent final rules issued by the Office of the Comptroller of the Currency (OCC) clarifying preemption of state laws relative to national banking activities and operations¹¹ and federal visitorial powers over national banks¹² are extremely helpful. Wells Fargo appreciates the OCC's efforts to provide clarification on long-standing preemption principles and these final rules, which were effective February 12, 2004, should aid in avoiding the duplication of regulation faced by national banks. However, due to the continued uncertainty that exists in this area it is still worth mentioning that it is extremely difficult for national banks to develop procedures, including system modifications, to comply with the fine distinctions inherent in state laws. While the state laws are generally similar in purpose to the federal laws, the variations added by each state complicate compliance on a 50-state basis. Wells Fargo, as are other national banks, is dedicated to compliance with consumer protection laws. However, compliance with federal laws and regulation by federal regulators is the most appropriate approach for national banks and for protection of consumers.

For example, the aggregate number of disclosures required to comply with federal and state consumer credit statutes for any one consumer contract, has tended to make these contracts full of legalese, bordering on adhesion contracts and almost impossible to draft to comply with Plain English statutes. This does not benefit the consumer. Additionally, due to the number and complexity of regulations pertaining to consumer products, large national banks are often forced to establish and fund separate compliance staffs to implement and monitor compliance with consumer regulations. These staffs are in addition to any internal audit staffs and/or outside auditors. Of course, the cost for this extra level of compliance is added to the cost of the consumer products.

¹¹ 69 Fed. Reg. 1904 (January 13, 2004).

¹² 69 Fed. Reg. 1895 (January 13, 2004).

Wells Fargo supports the OCC's preemption and visitorial powers final rules and encourages the OCC to continue its efforts to clarify the regulatory responsibilities of federal and state regulators in a dual banking system.

B. Complexity of Disclosures

Disclosure requirements for many of the consumer lending products are so complex that not only are the requirements difficult to comply with, but they no longer meet their stated purpose of helping consumers understand the terms of the credit product. The highly technical nature of some consumer credit disclosures has provided an opportunity for technical errors leading to litigation brought against well meaning creditors. These technical errors may not impact the consumers' ability to understand the terms of the extension of credit, but increase the litigation costs of lenders.

The Agencies may want to consider undertaking a more detailed review of consumer disclosure requirements for the various consumer lending regulations, such as Regulation Z and Regulation M. The goal of such a review should be simplicity, both for lender compliance and clarity for consumers. If the Agencies decide to pursue a separate notice of proposed rulemaking concerning disclosures for any of the consumer regulations, Wells Fargo will provide more detailed comments at that time. As the Agencies undoubtedly understand, it is more helpful for comment purposes, to respond to more targeted questions.

II. Comments to Specific Regulations

A. Truth In Lending Act – Regulation Z

1. Disclosure of APR in Periodic Statements.

Section 226.7(g) of Regulation Z requires the disclosure of the Annual Percentage Rate (APR) in periodic statements for open end credit. For periodic statement purposes, this APR must be calculated in accordance with Section 226.14. Subsection 226.14(c) prescribes a complex formula for calculating the APR. In addition to periodic rates (interest rates) applied to balances, the APR must also take into account certain charges (e.g. a transaction charge, such as an advance fee). While we would agree that the dollar amount of such charges needs to be separately itemized in the statement, including such charges in the APR is inappropriate. It has the effect of significantly inflating the APR for that particular cycle, which skews the "cost of credit" for the short period covered by any particular billing cycle and causes confusion to consumers.

The 226.14(c) requirement is even, in some respects, somewhat deceptive because other types of charges do not have to be taken into account in disclosing the APR in a periodic statement. For example, a creditor may charge a significant, lump-sum fee to open the account, but under the authority of footnote 33 within Section 226.14, this fee would not be reflected in any APR (initial disclosure, periodic statement, or otherwise). Similarly, a number of "other charges" do not need to be reflected in the APR shown in periodic statements.

Wells Fargo recommends that such charges as described above, not be required to be included in the APR calculation on periodic statements because inclusion of those items is confusing to the consumer. Rather, those items should be disclosed separately from the APR.

2. Disclosure of Negative Equity

The disclosure of negative equity is often misunderstood by automobile dealers. Section 226.18(j) requires disclosure of the “total sales price.”¹³ The commentary to that section explains how to disclose “negative equity” situations, such as when a trade-in value on an automobile purchase is less than the amount owed on the trade-in. The commentary provides alternatives on how the creditor may reflect the negative equity and any cash the consumer may be providing as a downpayment. One purpose of the alternatives is to facilitate compliance with different states’ laws on the disclosure of negative equity. With these alternative ways for disclosing negative equity, dealers (small non-institutional lenders) often are confused by the alternatives, which results in inaccurate disclosures. This, in turn, means that banks to which these contracts are sold have to return them to the dealer for corrections, which ultimately slows down the purchase process for the consumer. Wells Fargo recommends that Regulation Z be revised to establish only one way by which negative equity can be disclosed and clearly preempt inconsistent state disclosure laws, thereby, making it easier for dealers to comply.

3. Right of Rescission

For those consumer purpose loans that are subject to the TILA, borrowers are entitled to rescind certain loans until midnight of the third business day following the later of consummation of the transaction or the delivery of certain material disclosures and rescission forms. Regulation Z provides that the right to rescind does not apply to certain transactions including “refinancings by the original creditor of a loan already secured by the consumer’s principal dwelling provided no new funds are advanced.” For each transaction where a creditor has a right to rescind, even if that right is limited to rescission of “new advances,” the creditor must inform the borrower of such right by providing him or her with the appropriate model form or substantially similar notice.¹⁴

In accordance with the directive set forth in the TILA, the Board has included in Appendix H to Regulation Z Model Forms H-8 and H-9 designed to, in a clear and conspicuous manner, inform the borrower of his or her right to rescind the loan.¹⁵ The TILA assures protection for lenders who use the Model Forms provided in Regulation Z. Model Form H-8 informs the consumer that he or she has a right to “cancel [the] transaction.” The language contained in the Model Form gives the impression, and rightly so, that the transaction is rescindable in its entirety. Since the language contained in the H-8 Form is so broadly drafted, the Board also drafted a Model Form, Form H-9, to be used in those circumstances where the borrower refinances with the “original creditor” and gets cash back. Model Form H-9 informs the borrower that he or she is entering into a “new transaction to increase the amount of credit”

¹³ 12 CFR 226.18 (j) and Regulation Z Commentary No. 3.

¹⁴ 12 C.F.R. § 226.23(b).

¹⁵ See 15 U.S.C. § 1635.

previously provided by the creditor to the borrower. Form H-9 further informs the borrower that he or she is entitled to cancel the “new” transaction. This limiting language, of course, is designed to inform the borrower that he or she is not entitled to rescind that part of the debt owed to the creditor that was outstanding at the time of the refinancing. Unfortunately, given the fact that the refinancing of real estate-secured loans typically involves the replacing of the existing mortgage loan agreement and security instrument, use of the H-9 in many refinancings does not appear to be appropriate, although use of the model form does insulate the creditor from liability.

A creditor is deemed to be in compliance with the disclosure requirement (except with respect to numerical disclosures) if the creditor: (i) uses any appropriate Model Form as published by the Board; or (ii) uses any such Model Form and changes it by: (a) deleting any information that is not required; or (b) rearranging the Form, if in making such deletion or rearranging the Form, the creditor does not affect the substance, clarity, or meaningful sequence of the disclosure. Even though there is express permission in the statute for lenders to provide “comparable” rescission forms, few, if any, lenders take this liberty. The reason for this is largely fear of litigation since it would be a matter for a court to decide whether the form provided was comparable. We believe that the threat of wholesale rescission has not abated where lenders remain under the onus to provide “appropriate” disclosures. We believe that lenders would rather not fight this battle in the courtrooms throughout the country.

Attached please find a proposed integrated model rescission form for closed-end consumer loans.¹⁶ In order to ease the difficulty of complying with current notice laws using the existing H-8 and H-9 Model Forms, we recommend the Board consider undertaking a rulemaking to adopt the proposed form as either: (i) a substitute for the existing H-8 and H-9 Model Forms; or (ii) an alternative form to the use of the H-8 and H-9 Model Forms¹⁷. With respect to the latter, we believe that by discussing the general rescission right and the limited rescission right for original creditor refinancings in the same document the lender is assured compliance with the statute and the consumer is just as well informed as he would have been had the lender been forced to make a choice of which disclosure to provide. As long as the rescission notice: (i) contains all of the required information under Section 226.23(d); and (ii) is clear and conspicuous, the existence of alternative language does not cause the disclosure to be less clear to the consumer and, as importantly, forecloses any argument that the lender did not provide the appropriate Form. Alternatively we ask the Board to expressly provide that the H-8 is the appropriate form for all real estate secured loans in which the existing mortgage loan agreement and security instrument are replaced by a new loan agreement and security instrument.

B. Home Mortgage Disclosure Act – Regulation C

1. Voluntary Reporting by Certain Lenders.

Regulation C, implementing the Home Mortgage Disclosure Act, requires applicable financial institutions “to report data to its supervisory agency about home-purchase loans, home

¹⁶ See Attachment “A.”

¹⁷ See 15 U.S.C. § 1635; 12 C.F.R. § 226.23.

improvement loans, and refinancings that it originates or purchases, or for which it receives applications; and to disclose certain data to the public.”¹⁸ The regulation sets forth in very detailed language which institutions qualify as a “financial institution” and are, therefore, required to collect and report the data.¹⁹

Financial institutions regulated by the Federal Deposit Insurance Corporation or the Federal Reserve System are not allowed to voluntarily report data under the Home Mortgage Disclosure Act (HMDA):²⁰

What is a voluntary reporter?

A voluntary reporter is an institution that does not meet the reporting criteria but chooses to submit their HMDA data. Be reminded that if you choose to be a voluntary reporter, you are responsible for the accuracy and quality of your data, and your report must comply with the Home Mortgage Disclosure Act and Regulation C. Two FFIEC agencies, the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve System (FRS), do not accept voluntary reporters. Thus if you are regulated by the FDIC or FRS you do not have a choice; you must meet the reporting criteria to report.

One of the criteria for determining whether non-depository lenders must report is whether in the preceding calendar year, the institution's home purchase loan originations (including refinancings of home purchase loans) equaled or exceeded ten percent of its total loan originations, measured in dollars, or equaled \$25 million or more. If the reporting requirement has been triggered, the lender must start collecting HMDA data, including data on the personal characteristics of applicants, on the first day of the next calendar year. If the reporting requirement has not been triggered, the lender is prohibited by section 202.5(b) of Regulation B from inquiring about the applicant's personal characteristics. When a lender is close to meeting the triggering requirement near the end of a year, it may not know for sure whether the HMDA reporting requirement has been triggered until the end of the year and may have only a very short time to implement the correct procedures. Not only is this difficult for financial institutions to monitor, it can also be confusing to consumers and consumer interest groups who may see a particular financial institution report one year, but not the next. If voluntary reporting is allowed, the lender could plan to report under HMDA without having to worry whether it will satisfy the reporting criteria.

Additionally, sometimes more than one corporation may make dwelling secured loans from the same location, for example, when the lenders are regulated under different lending laws or different supervising officials. If only one of the lenders has triggered the requirements for reporting under HMDA it may be difficult to determine early in the application process whether to collect data on the personal characteristics of the applicant. If voluntary reporting is authorized, then information on the personal characteristics of the applicants could be uniformly collected at the best time for collection of such data regardless of which corporation ends up making the loan.

¹⁸ 12 CFR 203.1(c).

¹⁹ 12 CFR 203.2(e).

²⁰ See the FAQ from the FFIEC Web site: <http://www.ffiec.gov/hmda/faqtech.htm#hp12>

Consumer interest groups sometimes mistakenly claim that lenders are underreporting HMDA data when the lender simply did not trigger the reporting requirement for that year. Even though the lender can respond by explaining that it is not required or allowed to report HMDA data, its reputation may be damaged and some persons who heard the original claim may not understand or receive the explanation. If lenders could voluntarily report HMDA data, such claims by consumer groups may be prevented.

If voluntary reporting is allowed, section 202.5(a)(2) should be revised to allow collection on the applicant's personal characteristics for voluntary reporting purposes.

2. Voluntary Reporting of Other Dwelling-Secured Loans.

In addition to allowing all lenders to voluntarily report HMDA data, lenders that report HMDA data should be allowed to voluntarily report all dwelling-secured loans and applications for such loans. Lenders are prohibited from collecting information on the applicant's personal characteristics by section 202.5(b) of Regulation B on loans other than home purchase loan, home improvement loan or refinancings. Again, the best time to collect data on the applicant's personal characteristics is early in the application process, however, whether the loan will fall within one of the HMDA categories may not become clear until later. If lenders could voluntarily report all dwelling secured loans, then information on the personal characteristics of the applicants could be uniformly collected at the best time for collection of such data regardless of whether the loan falls within one of the three categories listed above.

If voluntary reporting is allowed, section 202.5(a)(2) should be revised to allow collection on the applicant's personal characteristics for voluntary reporting purposes.

Thank you for the opportunity to comment on “Consumer Protection: Lending-Related Rules” pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996. We would be pleased to supplement our comments in response to future rulemakings resulting from this process or to discuss any of our comments with you. Please contact the undersigned if you have any questions.

Sincerely,

Linda King Kading
Associate General Counsel
Wells Fargo Home Mortgage, Inc.,
on behalf of Wells Fargo & Co. and its affiliates

**ATTACHMENT “A” –
COMBINED H-8 AND H-9 RIGHT OF RESCISSION NOTICE FORM**

NOTICE OF RIGHT TO CANCEL

You are entering into a transaction with [lender] (“Us”). As a result of this transaction, the [lender] will have a [mortgage/security interest] [in/on] your home. You have the right to cancel this transaction within the timeframes and under the conditions set forth below.

When can I cancel this transaction?

You have a legal right under federal law to cancel this transaction within three business days from whichever of the following events occurs last:

- (1) the date of the transaction which is [date] ; or
- (2) the date you received your Truth in Lending disclosures; or
- (3) the date you received this notice of your right to cancel [date] .

How much of the transaction is cancelled?

If this transaction is a refinancing of a loan originated by Us, and you received a new advance as a result of the transaction, you may cancel only that part of your outstanding debt to Us that constitutes a new advance. A new advance is that amount of money that you received as a result of the transaction that exceeds the unpaid balance on your refinanced loan, plus any earned unpaid finance charges on your refinanced loan, plus the costs of the refinancing transaction.

If this transaction is not a refinancing of a loan originated by Us, you may cancel the entire transaction without cost.

What happens once I cancel the transaction?

If the transaction is a refinancing of a loan originated by Us where you received a new advance, and you cancel the transaction, such cancellation does not affect any amount that you presently owe to Us. Your home continues to secure this amount. Within 20 calendar days after we receive your notice of cancellation of the transaction, we must take the steps necessary to reflect the fact that your home does not secure the new advance. We must also return any money you have given to Us or to anyone else in connection with the new advance.

If the transaction is not a refinancing of a loan originated by Us, and you cancel the transaction, the [mortgage/lien/security interest] is also cancelled. Within 20 calendar days after we receive your notice, we must take the steps necessary to reflect the fact that the [mortgage/lien/security interest] [on/in] your home has been cancelled, and we must return to

you any money or property you have given to us or to anyone else in connection with this transaction.

In either case, you may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

How do I cancel the transaction?

If you decide to cancel this transaction, you may do so by notifying us in writing, at [lender's name and business address]

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of [date] (or midnight of the third business day following the latest of the events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL

Consumer's Signature Date